

***Developing Countries' Perspectives on
Intellectual Property Rights and Technology
Transfer in International Trade: A Critical
Appraisal***

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DECLARATION OF AUTHENTICITY

I certify this thesis has been written by me and does not incorporate without acknowledgment any material previously submitted for a degree or published by anyone. This work has not been presented in whole or in part for assessment elsewhere.

Signature: 

Date: 26.07.2011

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DEDICATION

This thesis is dedicated to my late father, my mother, my wife,
my daughter and to all who believe in the richness of learning.

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LIST OF ACRONYMS

AIDS - acquired immune deficiency syndrome
ARIPO- African Industrial Property Organization
ASEAN – Association of Southeast Asian Nations
CBD – Convention on Biological Diversity
CBU – completely built up
CEE – Central and Eastern Europe
CKD – completely knocked down
DSB – Dispute Settlement Body
DSU- Dispute Settlement Understanding
EC – European Commission; European Community
EPC- European Patent Convention
EPO- European Patent Office
EU – European Union
FDI – Foreign Direct Investment
FTC- Federal Trade Commission
GATS – General Agreement on Trade in Services
GATT – General Agreement on Tariffs and Trade
GDP – gross domestic product
HCMs – home-country measures
HIV – human immunodeficiency virus
IDAF- Invention Development Assistance Fund
IGE- International Group of Experts
IMF – International Monetary Fund
IP- intellectual property
IPRs – Intellectual Property Rights
ITC- International Trade Commission
ITT- International Technology Transfer
JPO- Japan Patent Office
KBAs - knowledge-based assets

KCA – Knowledge Commercialisation in Australia
 LAC – Latin America and Caribbean
 LDCs – Least-developed countries
 MDCs – moderately developed countries
 MENA – Middle East and North Africa
 MNCs – multinational corporations
 MNEs - multinational enterprises
 MNCs- Multinational Companies
 NICs – Newly Industrialized Countries
 OECD –Organization for Economic Co-operation and Development
 OEM- Original Equipment Manufacturer Agreement
 OLI- Ownership-Location-Internalization
 PCT- Patent Cooperation Treaty
 PLT – Patent Law Treaty
 PM5- Payment Manual Fifth Edition
 RBPs- restrictive business practices
 R&D – research and development
 SAP – Structural Adjustments Programs
 SDT- Special and Differential Treatment
 SMEs – small and medium-sized enterprises
 SSA – Sub-Saharan Africa
 STI – science, technology and innovation
 TLOs – technology licensing offices
 TNCs – transnational corporations
 TOT-IPRs – Transfer of Technology and Intellectual Property Rights
 TRIMS – Trade-Related Aspects of Investment Measures
 TRIPS – Trade-Related Aspects of Intellectual Property Rights
 UCC- Universal Copyright Convention
 UNESCO- United Nations Educational, Scientific and Cultural
 Organization

U.K. – United Kingdom
UPOV- Union for the Protection of Plant Varieties
URA – Uruguay Round Accord
U.S. – United States (of America)
USPTO- United States Patent and Trade Mark Office
UN – United Nations
UNCITRAL – United Nations Commission on International Trade Law
UNCLOS- United Nations Conference on the Law of the Sea
UNCTAD – United Nations Conference on Trade and Development
USTR - United States Trade Representative
VCLT- Vienna Convention on the Law of Treaties
WB – World Bank
WIPO – World Intellectual Property Organization

ABSTRACT

The economic variables that had warranted the need for regulating the movement of technology and other international business activities, inspired several multilateral discussions over the years, and eventually led to the formulation of Trade-Related Aspects of Intellectual Property Rights (hereafter referred to as TRIPS Agreement), Incidentally, TRIPS Agreement is one element of the Uruguay Round results, the package which also created the World Trade Organization (WTO). As such, it came into force with the WTO on January 1, 1995

This thesis critically examines the developing countries' perspectives on technology transfer in the light of the Agreement and analyses those areas which impact, either positively or negatively, on sustainable development in those developing countries. As its main concern, the thesis also proposes some policy actions for such countries, which would enable them, derive as much economic benefits as possible from the regime with the least cost possible.

It is noteworthy that, the thesis handles the TRIPS Agreement as signed, accepting it for better or for worse as a done deal. Because the author is not in the position to engage in lengthy discussions of the arguments and counter arguments that preceded its formulation. Nevertheless, appropriate highlights are given in relevant places throughout the thesis

While it contemplates a number of possible reforms, and suggests ways within the Agreement to interpret provisions to developing countries' advantage, the thesis does not explore the option of outright renunciation of the Agreement, as advocated by some groups.

The thesis therefore analyses the rules that Members of the WTO must follow in setting up systems to protect intellectual property rights within their borders. It also addresses the Agreement's uniqueness among the WTO elements which makes it positively proscriptive. That is, all other WTO rules describe what countries may not do, while TRIPS describes what countries must do. In this context, the thesis examines TRIPS's quality of being a manifestation of the evolution of the international trade regime toward non-tariff aspects of law which were formerly considered purely domestic policy.

Moreover, the thesis covers the issue of compliance period set for the Developing country Members and Members in transition from centrally-planned economies. In the same context it covers the issue of longer compliance period for least developed country members in view of their special needs and requirements.

The thesis also dwells considerably on the area where TRIPS basically applies i.e. Intellectual property rights (IPRs). It highlights the concept and its purpose of encouraging innovation, creativity and productivity.

Furthermore, the thesis studies intellectual property's two main characteristics, which lend it to such special legal protection. The first is that it tends to have high costs of development, and the second is that it tends to have low costs of reproduction.

As one of its main areas of concern, the thesis extensively examines the arguments and counter-arguments about IPR protection, bringing about all views with a view of maintaining the momentum of innovation on one hand and ensuring that developing countries' strategic economic interests are properly served on the other. Notwithstanding the course it takes, the thesis acknowledges that

without protection there would be less innovation, as nobody would be willing to stump up large amounts of money to develop new products if their inventions could be immediately copied and sold cheaply by others. It maintains that the stronger the IPR protection, the more money can be recouped by the innovator, and thus the more innovation tends to occur. In the meantime, the overriding needs of the poor and affordable access to the results of such innovation remain the key consideration of the thesis while proposing appropriate policy actions for the developing countries to maximally avail of the regime.

The thesis covers all such appropriate areas to the extent of their relevance to the subject. Concepts like patents, copyrights and trademarks are all covered in the context of developing countries perspective or rather what is supposed to be their perspective to serve their strategic economic interest. All these are done on assumption that TRIPS is designed to essentially regulate technology transfer, so as to facilitate wealth diffusion and wider economic prosperity. Accordingly, all the proposed policy actions suggested by the thesis are within the spirit of the TRIPS.

Moreover, the thesis analyses the costs and benefits of international technology transfer, specifically in the areas of IPRs, patenting and TRIPS in developing countries. Results from these analyses suggest that developing countries should view international technology transfer as a catalytic source of technological change, which leads to international competitiveness and economic growth. It also maintains that, developing countries can benefit greatly from international technology transfers. The thesis also facilitates the understanding of the complex environment of international trade, and affirms that international technology transfer is necessary for both

developed and developing countries to ensure sustainability in human economic endeavors.

What particularly distinguishes the thesis is its innovative style in arriving at any given proposal of policy action for the advantage of the developing countries. It uses two main styles, which are hitherto unexplored in the literature or elsewhere, hence constitute "a contribution to knowledge". The first style is analogical, where it seeks to arrive at reasonable deductions from the existing TRIPS provisions, to provide realistic suggestions for the developing countries strategic economic interests. The second is how the developing countries could effectively lobby and even capitalize on certain remotely relevant factors to exert some sort of pressure on the developing countries in order to succumb to the need of amending and/or changing some provisions in the TRIPS itself, which are considered obstacles to developing countries in their hope achieve maximum benefit from the regime.